

REGISTER



South Dakota Legislative Research Council

Volume 38

Monday, 8:00 a.m., October 24, 2011

NOTICES OF PROPOSED RULES: (The date in parentheses is the date the rules were filed in the Legislative Research Council)

Department of Health: Board of Medical and Osteopathic Examiners: (October 17, 2011) intends to adopt rules to establish procedures for applicants and licensees and disciplinary proceedings. The general authority for these rules, as cited by the commission, is SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-4C-14, 36-4C-15, 36-10-36, 36-10B-3, 36-10B-7, 36-29-17, 36-31-13, and 36-36-12.

A public hearing will be held at 101 N Main Avenue, Suite 303, Sioux Falls, South Dakota, on November 9, 2011, at 9:00 a.m. Copies of the proposed rules may be obtained from and written comments sent to the South Dakota Board of Medical and Osteopathic Examiners, 101 N Main Avenue, Suite 301, Sioux Falls, South Dakota, 57104. Written comments must be received by November 8, 2011, to be considered. This hearing is being held in a physically accessible place. Persons who have special needs for which the Board can make arrangements are asked to call (605) 367-7781.

Governor's Office of Economic Development: (October 17, 2011) intends to adopt rules that will create an Ethanol Infrastructure Incentive Program to provide incentives to retail motor fuel stations and others to increase the amount of ethanol sold in South Dakota. The general authority for these rules, as cited by the Department, is SDCL 10-47B-164.1 and 10-47B-164.2.

A public hearing will be held in Room 412, 4th floor, State Capitol, Pierre, South Dakota, on

November 7, 2011, at 1:00 p.m. Copies of the proposed rules may be obtained from and written comments sent to the Governor's Office of Economic Development, 711 East Wells Avenue, Pierre, South Dakota 57501. Written comments must be received by November 22, 2011, to be considered. This hearing is being held in a physically accessible place. Persons who have special needs for which the department can make arrangements are asked to call (605) 773-3301 at least 48 hours before the hearing.

Department of Environment and Natural Resources: Board of Minerals and Environment: (October 17, 2011) intends to replace the existing oil and gas conservation Article 74:10 with Article 74:12 which will give a clearer, simpler format that includes allowing approval of aquifer exemptions under the notice of recommendation process and allowing administrative approval of commingling oil from separate pools, completing producing wells in multiple zones, dissolving abandoned oil and gas fields, and drilling wells without a blowout preventer; expediting regulatory approval under the notice of recommendation process by allowing an operator to set a hearing date for cases that may or may not require a contested case hearing, excluding a duplicative requirement for monthly reporting of water production, an unnecessary requirement for annual submission of pipeline maps, duplicative requirements pertaining to directional wells and pits that are hazardous to birds or other species, an outdated rule pertaining to production of carbon dioxide and steam, and an unnecessary requirement for annual inspections of all oil and gas wells. The general authority for these rules, as cited by the Board, is SDCL 45-9-7, 45-9-11,

45-9-13, and 45-9-73.

A public hearing will be held at the Matthew Environmental Education and Training Center, Joe Foss Building, 523 East Capitol Avenue, Pierre, South Dakota, on November 16, 2011, at 10:15 a.m. (CST). Copies of the proposed rules may be obtained from and written comments sent to Minerals and Mining Program, Department of Environment and Natural Resources, Joe Foss Building, 523 East Capitol Avenue, Pierre, South Dakota 57501 or by calling 605-773-4201. Copies of the proposed rules may also be obtained by visiting the Department's web page at <http://www.state.sd.us/denr/des/og/rulesreg.aspx>. Material sent by mail must reach the Department by close of business on November 9, 2011, to be considered. This hearing is being held in a physically accessible place, Persons who have special needs for which the department can make arrangements are asked to call (605) 773-4201 at least 48 hours before the public hearing.

Department of Health: Office of Licensure and Certification: (October 18, 2011) intends to amend rules to enable birth centers to become licensed as health care facilities and to allow for the provision of an appropriate level of care and services associated with normal, uncomplicated pregnancies. The general authority for these rules, as cited by the department, is SDCL 34-1-17, 34-12-61, 34-12-62, 34-22-9, and 34-23A-51.

A public hearing will be held at the State Health Laboratory Building, 615 East 4th Street, Pierre, South Dakota, on November 16, 2011, at 9:00 a.m. Copies of the proposed rules may be obtained without charge from and written comments sent to the South Dakota Department of Health, 600 East Capitol Avenue, Pierre, South Dakota 57501. Copies of the proposed rules may also be obtained at the Health Department website: <http://doh.sd.gov/News>. Material sent by mail must reach the department by November 26, 2011, to be considered. This

hearing is being held in a physically accessible place. Persons who have special needs for which the department can make arrangements are asked to call (605) 773-3361 at least 48 hours before the public hearing.

FILINGS IN THE SECRETARY OF STATE'S OFFICE:

Executive Appointments:

Daniele Dosch, Rapid City, was reappointed on October 18, 2011, to the **Mental Health Planning and Coordination Advisory Council**, effective immediately and shall continue until June 30, 2014.

Kenneth L. Heeren, Sioux Falls, was appointed on October 18, 2011, to the **Mental Health Planning and Coordination Advisory Council**, to replace Phyllis Arends, effective October 12, 2011, and shall continue until June 30, 2014.

Robert A. Mandel, Pennington County, was appointed on October 18, 2011, as **Judge of the Seventh Judicial Circuit Court of South Dakota**, effective immediately upon taking the oath of office and shall continue until December 31, 2014.

John Pedersen, Pierre, was reappointed on October 18, 2011, to the **Mental Health Planning and Coordination Advisory Council**, effective immediately and shall continue until June 20, 2014.

Craig A. Pfeifle, Pennington County, was appointed on October 18, 2011, as **Judge of the Seventh Judicial Circuit Court of South Dakota**, effective immediately upon taking the oath of office and shall continue until December 31, 2014.

Susan R. Sandgren, Lemmon, was appointed on October 18, 2011, to the **Mental Health Planning and Coordination Advisory Council**, to replace Duane Majeres, effective

October 11, 2011, and shall continue until June 30, 2014.

Robert Bogue, Canton, was reappointed on October 19, 2011, to the **South Dakota Certification Board for Alcohol and Drug Professionals**, effective immediately and shall continue until June 30, 2014.

Martha B. Carlson, Sioux Falls, was appointed on October 19, 2011, to the **Board of Social Services**, to replace Patricia Kenner, effective October 13, 2011 and shall continue until June 30, 2014.

Steven C. Deming, Rapid City, was appointed on October 19, 2011, to the **Board of Social Services**, to replace Connie Kisecker, effective October 19, 2011, and shall continue until June 30, 2015.

Julia Dvorak, Mellette, was reappointed on October 19, 2011, to the **Board of Social Services**, effective immediately and shall continue until June 30, 2015.

Hugh Grogan, Sioux Falls, was reappointed on October 19, 2011, to the **Board of Social Services**, effective immediately and shall continue until June 30, 2015.

Thomas K. Johnson, Madison, was reappointed on October 19, 2011, to the **South Dakota Certification Board for Alcohol and Drug Professionals**, effective immediately and shall continue until June 30, 2014.

Kaye Neller, Mitchell, was reappointed on October 19, 2011, to the **Board of Social Services**, effective immediately and shall continue until June 30, 2015.

Linda I. Wordeman, Rapid City, was appointed on October 19, 2011, to the **Board of Social Services**, to replace Ed Colleran, effective October 17, 2011, and shall continue until June 30, 2012.

Executive Order:

The Governor has signed **Executive Order 2011-20** dated October 18, 2011. The Order implements the South Dakota Council for the Interstate Commission for Juveniles. The Order provides for the administration of the Council and its membership. The authority for the Council and its duties were outlined in the legislation adopted in 2004 and codified at SDCL Chapter 26-12.

Note: A copy of the rules may be obtained directly from the above agencies. Write to the agency at the address given under "Notices of Proposed Rules." There is no charge for proposed rules. The following agencies have permission from the Interim Rules Review Committee to charge for adopted rules: the Division of Insurance, the Cosmetology Commission, the State Board of Examiners in Optometry, the State Plumbing Commission, the Board of Nursing, the Department of Social Services, the State Electrical Commission, the South Dakota Board of Pharmacy, the Real Estate Commission, the Gaming Commission, the Department of Revenue and Regulation, and the Department of Labor for Article 47:03.

REMINDER OF HEARINGS SCHEDULED

11-3-2011	Game, Fish, and Parks	Amend General Provisions rules that would (a) add definitions for "legal spear," "line," and modify the definition of "liberalized fishing" to remove the reference to methods of take; (b) replace all references to "spear" in the rule chapter with the term "legal spear"; (c) add a new rule which creates a permit allowing fish legally possessed by licensed anglers to be gifted to charitable/nonprofit organizations
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	<p>under certain conditions; (d) remove Allen Dam and Little Moreau No. 2 from the prohibition on baitfish use; (e) remove Lake Poinsett Rearing Pond, Platte Creek Rearing Pond, and American Creek Fish Spawning Station from the list of "no fishing zones"; (f) add "hook and line" to the list of authorized methods of take in liberalized fishing waters; (g) modify the rule prohibiting introduction of nonnative fish into state waters and prohibiting possession and transportation of snakehead fish; and (h) modify the rule prohibiting high grading of fish to remove the prohibition of high grading of bluegills on Enemy Swim/Campbell Slough; amend a Fishing Seasons rule pertaining to waters open to the taking of bait that would no longer allow legal anglers to transfer bait collected from that portion of the Missouri River below Gavins Point Dam for use during the same day in the Missouri River below Gavins Point Dam; amend Snagging of Paddlefish rules that would (a) allow applicants for paddlefish snagging permits to apply for a preference point only with no opportunity for issuance of a permit as is allowed with most big game licenses and (b) add a limited paddlefish snagging season on Lake Francis Case which would run from May 1 through May 31; amend Fish Limits rules that would (a) remove the current length restrictions placed on black bass (smallmouth and largemouth bass) on Lake Sharpe and (b) change the word "catch" to "harvest" in the rule which establishes daily and possession limits for nonresident family fishing licenses; amend Spearing rules that would (a) replace all references to "spears" with the term "legal spear"; (b) add Mud Lake and Cottonwood Lake in Roberts County to the list of waters where game fish spearing is allowed; and (c) allow applicants for archery paddlefish permits to apply for a preference point only with no opportunity for issuance of a permit as is allowed with most big game licenses; amend Bait rules that would (a) raise fees for all bait dealer licenses; (b) change "flathead shiners" to "flathead chub" under species that may be taken as bait for noncommercial use; and</p>
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		(c) close the James, Big Sioux, and Vermillion Rivers as well as the Missouri River below Gavins Point Dam to both the commercial and noncommercial taking of bait year round; amend Private Fish Hatcheries rules that would (a) increase private hatchery license fees and (b) modify the rule pertaining to license approval criteria to allow for bullheads and green sunfish to be present when approving private hatchery ponds; adopt a new chapter to Article 41:10 – Special Management Categories, which deals with regulation of aquatic nuisance species; 38 SDR 65.
11-7-2011	Governor's Office of Economic Development	Adopt rules that will create an Ethanol Infrastructure Incentive Program to provide incentives to retail motor fuel stations and others to increase the amount of ethanol sold in South Dakota; 38 SDR 71.
11-9-2011	Public Utilities Commission	Amend rules to correct statutory citations; revise how refunds and charges are calculated and assessed for gas or electric meters that are running either slow or fast; limit charges for residential customers for meters that do not register properly; revise how refunds and charges are calculated and assessed for other types of electric or gas meter errors; set time frames for overcharge or undercharge payments; allow a utility to create a regulatory asset for amounts not otherwise recovered from a residential customer for meter errors; set forth the definitions for a new chapter of rules regarding renewable energy credits and renewable, recycled, and conserved energy; set forth how a retail provider of electricity shall determine the amount of conserved energy achieved through energy efficiency measures; describe how demand response measures are to be measured and verified; and set forth how a provider of electricity shall report renewable energy credits to the Public Utilities Commission; 38 SDR 65.
11-9-2011	Department of Health: Board of Medical and Osteopathic Examiners	Adopt rules to establish procedures for applicants and licensees and disciplinary proceedings; 38 SDR 71.
11-16-2011	Department of Environment and Natural Resources: Board of Minerals and Environment	Intends to replace the existing oil and gas conservation Article 74:10 with Article 74:12 which will give a clearer, simpler format that includes allowing approval of aquifer

		exemptions under the notice of recommendation process and allowing administrative approval of commingling oil from separate pools, completing producing wells in multiple zones, dissolving abandoned oil and gas fields, and drilling wells without a blowout preventer; expediting regulatory approval under the notice of recommendation process by allowing an operator to set a hearing date for cases that may or may not require a contested case hearing, excluding a duplicative requirement for monthly reporting of water production, an unnecessary requirement for annual submission of pipeline maps, duplicative requirements pertaining to directional wells and pits that are hazardous to birds or other species, an outdated rule pertaining to production of carbon dioxide and steam, and an unnecessary requirement for annual inspections of all oil and gas wells; 38 SDR 71.
11-16-2011	Department of Health: Office of Licensure and Certification	Amend rules to enable birth centers to become licensed as health care facilities and to allow for the provision of an appropriate level of care and services associated with normal, uncomplicated pregnancies; 38 SDR 72.
11-18-2011	Revenue: South Dakota Lottery Commission	Amend a rule that would require lottery retailers to collect \$2.00 for the sale of each Powerball play instead of \$1.00; 38 SDR 66.

RULES REVIEW COMMITTEE MEETINGS

The next meeting of the Interim Rules Review Committee will be held Tuesday, November 15, 2011. The committee chair has set the following tentative meeting schedule for the 2011 interim: December 20.

Note: An updated version of the Administrative Rules Guide to Form and Style is available on the Legislative Web site at <http://legis.state.sd.us/rules/index.aspx>.